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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

GEORGE E. GARCIA, SR.,	)	CV 05-115-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
SAFECO INSURANCE COMPANY	)	
OF ILLINOIS,	)	
	)	
Defendant.	)	
_____	)	

Judge Leif B. Erickson entered a Findings and Recommendation on this case regarding Defendant's motion to dismiss (dkt #4) on October 18, 2005.

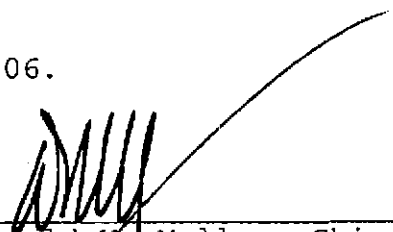
Defendant did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427

(9th Cir. 2000).

As Judge Erickson recommended, Defendant's motion should be dismissed as moot. Plaintiff filed his complaint alleging violations of the Unfair Trade Practices Act (UTPA) and common law bad faith claims before the underlying claim was resolved. Defendant filed a motion to dismiss, correctly noting that Plaintiff's complaint was premature. On October 3, 2005, the underlying claim, *Garcia v. Estate of Hubert Sager, Safeco Ins. Co., and Depositors Ins. Co.*, settled in the Montana Twentieth Judicial District Court, Lake County. Defendant's motion is now moot and Plaintiff's claims may move forward. Both Parties have acknowledged the propriety of Judge Erickson's opinion.

Based on the foregoing, Judge Erickson's Findings and Recommendation are adopted in full. IT IS HEREBY ORDERED that Defendant's motion to dismiss (dkt #4) is DENIED as moot.

DATED this 7<sup>th</sup> day of March, 2006.

  
\_\_\_\_\_  
Donald W. Molloy, Chief Judge  
United States District Court  
